INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

International Arbitration Tribunal

CASE NUMBER 01-21-0000-4309

ARBITRATION PURSUANT TO
THE COMMERCIAL ARBITRATION RULES OF
THE AMERICAN ARBITRATION ASSOCIATION

BETWEEN:

TELECOM BUSINESS SOLUTION, LLC, on its own behalf and derivatively, on behalf of CONTINENTAL TOWERS LATAM HOLDINGS LIMITED, and LATAM TOWERS, LLC, on its own behalf and derivatively on behalf of CONTINENTAL TOWERS LATAM HOLDINGS LIMITED,

Claimants,

vs.

TERRA TOWERS CORP., TBS MANAGEMENT, S.A., DT HOLDINGS INC., JORGE HERNANDEZ and ALBERTO ARZÚ,

Respondents,

and

CONTINENTAL TOWERS LATAM HOLDINGS LIMITED,

Nominal Respondent,

TERRA TOWERS CORP., TBS MANAGEMENT, S.A., DT HOLDINGS INC. derivatively and on behalf of CONTINENTAL TOWERS LATAM HOLDINGS LIMITED,

Counterclaimants,

vs.

TELECOM BUSINESS SOLUTION, LLC, LATAM TOWERS, LLC, F. HOWARD MANDEL, JOHN RANIERI, RYAN LEPENE, and AMLQ HOLDINGS (CAY) LTD.,

Counterclaim Respondents.

-and-

CONTINENTAL TOWERS LATAM HOLDINGS LIMITED,

Nominal Respondent.

AMLQ HOLDINGS (CAY) LTD.,

Counterclaimant,

vs.

TERRA TOWERS CORP. and TBS MANAGEMENT, S.A.

Counterclaim Respondents.

Fourth Partial Final Award

Introduction

1. This Award addresses quantification of the reasonable attorneys' fees, expenses, and arbitrator fees, which we awarded to Claimants Telecom Business Solution LLC and LATAM Towers, LLC (together, "Peppertree") and to Claimant AMLQ Holdings (Cay) Ltd. ("AMLQ"), collectively "Claimants," - in our Third Partial Final Award dated February 22, 2023 ("3d PFA") but did not then quantify.

2. The 3d PFA provided that procedural directions would be issued setting a schedule for submissions concerning quantification of the awarded costs, and that a further award quantifying those costs would then be made.

3. We directed Claimants to make their submissions by March 8, 2023 and for Respondents to submit their comments by March 17. Claimants made their submissions on March 8, 2023 (a joint brief, and separate affidavits of their respective lead counsel accompanied by exhibits). Respondents made no submissions.

4. The matter is thus ripe for decision and we therefore make this Fourth Partial Final Award herein.

Peppertree's Costs Claim

5. Peppertree supported its costs submission with a Declaration from the lead attorney Michael N. Ungar of the law firm Ulmer & Byrne LLP.

6. The billing records of Ulmer & Byrne underlying Peppertree's claim to recover the fees incurred in regard to the Application were submitted as Exhibit A to Mr. Ungar's Declaration.

7. In his Declaration and the accompanying exhibits, Mr. Ungar provided information about the professional stature of Ulmer & Byrne and the professional credentials of Mr. Ungar and the other Ulmer & Byrne lawyers who worked on the Application. He also reported the hourly billing rates charged to Peppertree for his time and that of those other attorneys.

8. According to a chart contained in Mr. Ungar's Declaration, summarizing the billing records submitted as an exhibit, Ulmer & Byrne lawyers recorded 584.3 hours in relation to the Application, and Peppertree paid or incurred $342,473 for those hours of work, with the average billable hourly rate for those hours amounting to $586.29.

9. Mr. Ungar summarized in his Declaration the work performed by Ulmer & Byrne lawyers in regard to the Foreign Arbitrations and the Application, including: initial evaluation of the Peru Arbitration filing; vetting and engaging Peru counsel for the Peru Arbitration; reviewing the Company's initial submission to the Tribunal in regard to the Peru Arbitration; initial evaluation of the Guatemala Arbitration; participating in communications with Respondents' counsel concerning the Foreign Arbitrations; preparing the Application in conjunction with AMLQ

counsel; submitting additional written comments as requested by the Tribunal; and participating in the oral hearing on behalf of Peppertree.

10. Mr. Ungar states in the Declaration that nearly all of the Claimants' submissions to the Tribunal were made jointly by Peppertree and AMLQ with Peppertree having taken primary responsibility.

11. Peppertree, per Mr. Ungar's declaration, claims $22,219.15 for the incurred cost of translation and stenographer services for which supporting documentation is provided in Exhibit A to Mr. Ungar's Declaration.

12. Peppertree also claims $166,000 as its share of the fees of the Arbitral Tribunal in regard to the Application. This quantification is based on the estimated hours submitted to the ICDR by the Tribunal as the basis to send invoices to the Parties.

AMLQ's Costs Claim

13. AMLQ supports its application for costs with a Declaration from the lead attorney for its counsel in this arbitration, Gregg Weiner of Ropes & Gray LLP.

14. Mr. Weiner in his Declaration describes the Ropes & Gray firm, summarizes his own professional credentials and recognition, and provides as exhibits the professional biographies of the Ropes & Gray lawyers involved in the arbitration.

15. Mr. Weiner provided a chart that summarized the time spent by each attorney in connection with the Application and revealed the total dollar amount of the fees incurred to Ropes & Gray. These totals were 201.7 hours and $118,200.59. Thus the average hourly rate for time spent on the Application by Ropes & Gray attorneys was $586.02.

16. Mr. Weiner explained in his Declaration that the hourly rates charged by his firm to AMLQ were based on a discount from the firm's standard hourly rates that is extended to all clients who are affiliates of Goldman Sachs. He stated that the amount of the discount is competitively sensitive information, and was therefore redacted, but AMLQ offered to reveal the actual hourly rates charges for *in camera* review by the Tribunal.

17. When notified by AMLQ counsel that they proposed to submit the redacted information for *in camera* review, the Tribunal directed AMLQ to refrain from making this submission. The Tribunal invited Respondents to submit comments on whether the Tribunal should accept AMLQ's offer of *in camera* submission of the redacted hourly rates. No comments were submitted.

18. The Tribunal thereafter notified the Parties that it would not accept an *in camera* submission. The Tribunal's reason for that decision is that the reasonableness (or not) of Ropes & Gray's hourly rates charged to AMLQ can be assessed by comparing the average hourly rate to the average hourly rate charged by Ulmer & Berne to the Peppertree-related Claimants. The amount of the discount is not relevant to our analysis. We can take notice based on our own knowledge and experience that the usual and customary hourly rates charged by prominent New York and Boston law firms are generally higher than those of their peers in Cleveland. Here the outcome was that the average

hourly rates charged by Ropes & Gray and Ulmer & Berne were nearly identical, so there could not be (and there was not) any contention by Respondents that Ropes & Gray's hourly rates charged to AMLQ were unreasonable.

19. Mr. Weiner's declaration summarized the work performed by AMLQ lawyers in regard to the filing of the Foreign Arbitrations and the Application: initial review of the Peru Arbitration filing; review of the Company's initial submission to the Tribunal; assisting Peppertree counsel in fashioning strategy in regard to the Application; sharing with Peppertree counsel the work involved in drafting, researching and otherwise preparing the Application; analyzing the Guatemala Arbitration filing and vetting potential counsel for the Guatemala Arbitration; participating in communications with Respondents' counsel concerning the Foreign Arbitrations; and preparing and presenting portions of the oral argument made by Claimants and the February 2, 2023 oral hearing.

20. AMLQ also claims $71,400 as its share of the fees of the Arbitral Tribunal in regard to the Application. This quantification was based on the estimated hours for the proceedings submitted to the ICDR by the Tribunal as the basis to send invoices to the Parties.

The Tribunal's Analysis

21. The arbitration agreements that supply the basis for this Tribunal's jurisdiction provide for costs to be awarded. Section 8.11 of the Subscription and Contribution Agreement states: "The Award may include an award of costs, including reasonable attorney's fees and disbursements."

Identical language appears in Section 8.15 of the Shareholders Agreement, and that Section is incorporated by reference in Section 3.4 of the Development Agreement.

22. Rule R-47(d)(ii) of the AAA Commercial Arbitration Rules, 2013 version, applicable here by agreement of the Parties, provides that "[t]he award of the arbitrator(s) may include: … an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement."

23. Rule R-47(b) provides that "in any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate."

24. Therefore the AAA Rules in conjunction with the arbitration agreements of the Parties provide this Tribunal with power to assess and award legal fees and expenses incurred by any party, and arbitrator fees incurred by any party.

25. Implicit in the Parties' arbitration agreements as we construe them, and in the AAA Rules cited above as they have been applied in international and domestic cases, is that costs may be assessed in favor of a party that prevails on the merits. On this basis our power to award costs including arbitrator fees and reasonable legal fees and expenses to Claimants as the prevailing party in our Third Partial Final Award is clear.

Reasonable Attorneys' Fees and Legal Expenses

26. Both the parties' agreements and the applicable Rules are reasonably construed to permit costs assessment to be made in a separate Award after the merits have been determined in a partial Award. This is particularly true as to interim relief where the importance of issuing an award with dispatch militates against a delay in award issuance based on proceedings to assess and allocate costs. In all events no objection to our proceeding in this way has been raised by any party.

27. Whereas "reasonable attorney's fees" is a term of the Parties' agreements and these agreements are governed by New York law, the specific content given to that term by New York courts applying New York law informs our application of the agreement: "'In evaluating what constitutes… reasonable attorney's fees, factors to be considered include the time and labor expended, the difficulty of the questions involved and the required skill to handle the problems presented, the attorney's experience, ability, and reputation, the amount of money involved, the customary fee charged for such services, and the results obtained." Lippes v State University of New York at Buffalo, 213 A.D.2d 1316 (4th Dept 2023), *quoting from* Matter of Dessauer, 96 A.D.3d 1560, 1561 (4th Dep't 2012). *Accord*, A&M Global Mgt. Corp. v. Northtown Urology Assoc., 115 A.D.3d 1283, 1290 (4th Dep't 2012).

28. We apply these criteria in the context of an arbitration that has been ongoing since February 2021, with Claimants having chosen counsel in 2021 who remain in their roles. This dispute was initially valued by Claimants at approximately $195 million, corresponding to the sum Claimants

alleged they would have derived if Respondents had accepted the offer to purchase the Company in the offer originally presented by an entity named Torrecom in 2020. Therefore the original decisions of Peppertree and AMLQ to be represented by eminent law firms in their respective locales (Cleveland and New York) whose hourly billing rates correspond to their stature is not open to question here (and in all events is not challenged by Respondents who have submitted no comments on the reasonableness of Claimants' attorney fees). Further analysis of the reasonableness of the hourly rates of counsel therefore should be made in terms of the allocation of work among lawyers at various points along the range of hourly rates of lawyers involved in the case.

29. This was a complex and high stakes matter. In allocating responsibility among lawyers of various levels of experience and expertise, Claimants might reasonably have feared that the Foreign Arbitrations were a stratagem of Respondents to circumvent the stay of proceedings on Respondents' counterclaims imposed by the Tribunal and to harm irreparably the prospects for a sale of the Company.

30. It added to the high stakes of the matter that the potential existed for additional Foreign Arbitrations to be commenced in each of the Central and South American countries in which the Company operates and has operating subsidiaries. That risk has been confirmed by the commencement of Foreign Arbitrations in El Salvador and Honduras, reported to the Tribunal by Respondents after issuance of the 3d PFA.

31. Effort was justifiably spent on selecting counsel for the Foreign Arbitrations and understanding the legal landscape for those arbitrations in terms of such initial matters as counsel selection for the Claimants as individual respondents and for the Company as a Respondent, arbitrator selection, objections to jurisdiction, and filing of an answer. Effort was also justifiably spent negotiating with Respondents' counsel over potential joint action to terminate the Foreign Arbitrations. And effort was justifiably spent to present to the Tribunal a clear picture of the relevant corporate structure and where the Foreign Arbitration Claimants fit. We have no basis to question either the time devoted to these matters or the judgments made about what lawyers at what billing rates would handle this work.

32. Claimants' counsel made a number of written submissions to the Tribunal all of them invited and these were accompanied by (in total) more than two dozen exhibits. Those submissions covered a number of issues pertinent to the Application. These issues included the basic factual issue of whether there was an identity of issues between the claims asserted in the Foreign Arbitrations and the counterclaims earlier asserted by Respondents in this arbitration.

33. Uncertainty about the authenticity, service, and significance of a purported *ex parte* judicial injunction of a court in Peru, its relevance to the Application, and its consequence if any for the Company's or the Respondents ability to terminate the Company Manager Claimants, also added complexity to the matter that contributed to the time that Claimants' counsel (and the Tribunal) were required to spend.

34. The Tribunal directed the Parties to prepare and submit comments concerning the doctrine of direct benefits estoppel, in aid of the Tribunal's consideration of the scope of injunction powers. The Tribunal also called for documents to be produced by Respondents, and the scope of Respondents' compliance became an issue to which counsel time was reasonably devoted.

35. We stop short of awarding Claimants 100% of the fees they claim, however, because Claimants' proposals for injunctive relief were based on a legal premise that we did not embrace: that Federal Rule of Civil Procedure 65 is applicable in this arbitration and authorized the Tribunal to enter an anti-arbitration injunction that would bind the named claimants in the Foreign Arbitrations. The particular interim relief granted by the Tribunal was fashioned by the Tribunal and accepted by the Claimants when their comments on the proposed relief were invited. In this sense Claimants were less than 100% successful on the remedy branch of the Application. In our discretion, we apply a 10% reduction to the legal fees claimed by Claimants, and award Claimants 90% of the fees of the Tribunal incurred in connection with the Application.

36. Accordingly, we award the Peppertree Claimants, jointly and severally, the sum of $308,225.70 in respect of their claim for attorneys' fees, representing 90% of the claimed amount of $342,473. We also the award Peppertree Claimants, jointly and severally, $22,219.15 as claimed for expenses incurred for translation services and the hearing transcript for the February 2, 2023 oral hearing.

37. We award AMLQ the sum of $106,380.53 in respect of its claim for attorneys' fees, representing 90% of the claimed amount of $118,200.59. (AMLQ submits no claim for expenses for services other than those of its counsel).

Fees of the Tribunal

38. In regard to arbitrator fees, the Parties' submissions indicate that they had made or would make deposits for the fees of the arbitrators, applicable to satisfy arbitrator invoices during the period when the Tribunal function in regard to the Application, in the sum of $238,000 with Peppertree depositing 70% ($166,400) and AMLQ depositing 30% ($71,400). They payment of those sums has been confirmed to the Tribunal by the ICDR. It is not disputed that Claimants are and have been bearing 100% of deposits for arbitrator fees and expenses because Respondents are unwilling to pay their share or any portion thereof.

39. The Claimants' claims for arbitrator fees are based on the sums invoiced to them by the ICDR, and these invoices were based on estimates provided by the Tribunal. However, the proper basis for awarding such costs is the sum of the Tribunal's actual invoices submitted to and paid by the ICDR related to the Application, including work on this costs Award and post-Award issues related to the 3d PFA. The sum of such invoices approved and paid by ICDR is $223,175.00 and for the reasons stated in paragraph 35, we award 90% of that sum, or $200,857.50, of which 70%, $140,600.25 , is awarded to the Peppertree Claimants jointly, and 30%, $60,257.25, is awarded to AMLQ.

Interest

40. The amounts payable under this Award shall bear simple interest from the date of this Award until the date of payment at the rate of Eight Percent (8 %) This is the current Wall Street Journal Prime Rate (www.bankrate.com/rates/interest-rates/wall-street-prime-rate) (last visited April 10, 2023).

AWARD

1. The Respondents, jointly and severally, are obligated to pay, and one or more of them shall pay the Peppertree Claimants (as defined herein), in total, the sum of $471,045.10, within ten (10) business days from the date of this Award.
2. The Respondents, jointly and severally, are obligated to pay, and one or more of them shall pay AMLQ (as defined herein), in total, the sum of $166,637.78, within ten (10) business days from the date of this Award.
3. Simple interest at the rate specified above in paragraph 40 shall accrue from the date of this Award to the date of payment.

We, THE UNDERSIGNED ARBITRATORS, do hereby certify, for purposes of Article III of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards concluded June 10, 1958, and Article 4 of the Inter-American Convention on Commercial Arbitration concluded January 30, 1975, that this Fourth Partial Final Award is made in New York, New York, USA.

April 10, 2023

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Marc J. Goldstein, Chair

April 10, 2023

Mélida N. Hodgson, Arbitrator

April 10, 2023

Richard F. Ziegler, Arbitrator

I, Marc J. Goldstein, Chair, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed the foregoing instrument, which is the Third Partial Final Award.

April 10, 2023

Marc J. Goldstein, Chair

I, Mélida N. Hodgson, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed the foregoing instrument, which is the Third Partial Final Award.

April 10, 2023

Mélida N. Hodgson, Arbitrator

I, Richard F. Ziegler, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed the foregoing instrument, which is the Third Partial Final Award.

April 10, 2023

Richard F. Ziegler, Arbitrator